

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5156 of 1996

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SHAJUL GEORGE

Versus

STATE OF GUJARAT  
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Appearance:

MR AMIT M PANCHAL for Petitioner  
MR SUNIL C PATEL for Respondent No. 2  
SERVED BY DS for Respondent No. 5  
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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5453 of 1996

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HETALKUMAR RAJENDRAPRASAD YAGNIK

Versus

STATE OF GUJARAT  
-----

Appearance:

MR AMIT M PANCHAL for Petitioner  
MR SUNIL C PATEL for Respondent No. 1  
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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5555 of 1996

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE G.D.KAMAT and  
MR.JUSTICE C.K.THAKKER  
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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

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RH SHAH

Versus

STATE OF GUJARAT  
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Appearance:

MR GM JOSHI for Petitioners

GOVERNMENT PLEADER for Respondent No. 1, 2, 3, 4  
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CORAM : THE CHIEF JUSTICE G.D.KAMAT and

MR.JUSTICE C.K.THAKKER

Date of decision: 05/10/1996

CAV JUDGMENT (PER C.K.THAKKER J.)

Rule. Mr. Y.F.Mehta appears and waives service of rule on behalf of State authorities and Mr.H.M.Mehta, appears and waives of service of rule on behalf of Union of India. In the facts and circumstances of the case and with the consent of parties, the matters were taken up for final hearing.

All these petitions have been filed under public interest litigation challenging legality and validity of certain rules for admission to First M.B.B.S. / First B.D.S./First B.Physio. Courses at the Government Medical Colleges, Pramukh Swami Medical College, Karamsad, Government Dental Colleges and Schools of Physiotherapy for the academic year 1996-97. Reservation of 48 % of total seats instead of available seats after deducting 15% of the total number of seats in all Medical Colleges to be filled in on the basis of All India Entrance Examination is challenged. A grievance is also made against twelve payment seats for Non-Resident Indians (NRI) in Pramukh Swami Medical College, Karamsad, respondent no.4 to be filled in by receiving minimum amount of 15000 US Dollars per annum per student with no maximum limits. The validity of a rule by which the Central Government is permitted to nominate ten students at the First MBBS course at M.P.Shah Medical College, Jamnagar is also questioned on the ground that there cannot be any reservation of seats either for Central Government or for State Government not provided by Art.15 of

the Constitution.

To appreciate the controversy raised in this group of petitions, few relevant facts of the first petition, i.e. Spl.C.A.No. 5156 of 1996 may now be stated;

The petitioner in this case is one Shajul George, who has approached this court through his father and natural guardian M.J.George. The petitioner claims to have passed 12th standard Higher Secondary Certificate Examination conducted by the Gujarat Higher Secondary Examination Board at the first attempt in March 1996. He secured 394 marks out of 450 marks in Science Stream and thus secured about 87.55 % of marks. The petitioner has stated that he aspires to pursue professional course of medicine or engineering and for that he filled in necessary form seeking admission. When he studied the Rules relating to admission to professional courses for the current academic year 1996-97, he found that they are arbitrary, unreasonable and violative of constitutional provisions. They are also inconsistent with various decisions of the Apex Court. He felt that if the rules framed by the respondent authorities would be implemented, he and other similarly situated persons would be deprived of their legitimate rights of getting admission to professional courses and, hence, as pro bono publico, he has filed this petition. Similar petitions are filed by other petitioners.

Notices were issued and Respondents have appeared. Affidavits were filed on behalf of the State as well as on behalf of Union of India.

We have heard at length M/s. A.M.Panchal and G.M.Joshi for the petitioners, Mr.Y.F.Mehta, Assistant Government Pleader for State Authorities and Mr.H.M.Mehta Senior Standing Counsel for Union of India.

Mr. Panchal, learned counsel for the petitioners, raised the following contentions;

- (1) As per the law laid down by the Supreme Court, 15% seats from the total seats at the first MBBS course are required to be reserved for All India Entrance Examination. The seats for Schedule Caste. Schedule Tribe and SEBC under Art.15 of the Constitution can be reserved only thereafter and from the available seats of 85%. The respondents, however, have acted illegally by making reservation of 48% seats for S/C,S/T and SEBC from the total seats.

- (2) The respondents have no right to reserve ten seats at the First MBBS course at M.P.Shah Medical College, Jamnagar to be nominated by the Central Government.
- (3) No principles and/or guidelines have been laid down for such nomination. No provision for obtaining minimum marks is made. It is left open to the Central Government to make nomination of ten students at its sweet will irrespective of merits. This provision is, therefore, arbitrary and unreasonable.
- (4) A provision for filling of twelve seats for Non-Resident Indians (NRI) by receiving a minimum amount of 15000 US Dollars per student per annum with no maximum limit is contrary to and inconsistent with the law declared by the Apex Court.

Mr.G.M.Joshi supported the arguments of Mr. Panchal.

Mr.Y.F.Mehta, learned Assistant Government Pleader, on the other hand, supported the action of the authorities and submitted that no case has been made out by the petitioners.

- (1) Regarding twelve payment seats for NRI and fixing of 15000 US Dollars per student, per annum, Mr.Mehta produced a corringendum dt. August 1, 1996 issued by the State Government wherein it is stated that the word "minimum" appearing in Rule 3 of the Rules has been deleted. He also made a categorical statement that fee of 15000 US Dollars per student per annum is the "maximum" and not "minimum".
- (2) Regarding reservation for S/C,S/T and SEBC, Mr.Mehta submitted that the action of the respondents is in conformity with the Constitution as also in consonance with the decisions of the Hon'ble Supreme Court. He submitted that the reservation of 15% seats from the total seats available for All India Entrance Examination does not affect 48% reservation under Art. 15 of the Constitution for Schedule Caste, Schedule Tribe and SEBC. The said reservation is permissible in law.
- (3) Regarding ten nominees by the Central Government, at the First MBBS Course at M.P.Shah Medical College, Jamnagar, it was argued that it was a policy

decision taken by the State which cannot be interfered with by this court.

Mr.H.M.Mehta, learned Senior Standing Counsel supported the case put forward by the State Government. He, moreover, raised the following contentions;

- (4) The petitioners have approached this court by way of public interest litigation though the grievance is of a private nature. This court may, therefore, not exercise extraordinary powers in their favour. If the petitioners belong to Schedule Caste, Schedule Tribe and/or SEBC, they can avail of benefits available under the Rules. If they do not belong to that class, they have no right to make grievance against reservation.
- (5) The petitioners have not made those students party respondents who are likely to be affected. Hence, the petitions are liable to be dismissed for want of necessary parties.
- (6) Regarding ten seats earmarked for nominees to be nominated by the Central Government, Mr.Mehta submitted that on principle the action cannot be held illegal. Nomination of a particular student may be bad. It would , however, not affect policy.

Now, before we proceed to decide controversy raised in these petitions, it would be appropriate to consider the rules framed by the State Government for granting admission to Medical /Dental/Physiotherapy Courses. The rules are known as the " Rules for admission to First M.B.B.S./First B.D.S./First B.Physio. Courses at the Government Medical College, Pramukh Swami Medical College, Karamsad, Government Dental Colleges and Schools of Physiotherapy for the academic year 1996-97." Rule 1 defines 'qualifying examination'. Rule 2 makes provision for reservation. It states that 7%, 14% and 27% of the total seats as mentioned in Annexure A to the Rules, shall be reserved for the candidates belonging to S/C, S/T including Garudi and Jogi and S.E.B.C. respectively. Rule 2.7 implements the judgment of the Hon'ble Supreme Court and states that 15% of the available seats at all Government Medical and Dental Colleges will be allotted to candidates of All India Entrance Examination. Rule 3 declares that 88 seats out of total sanctioned seats of 100 in Pramukh Swami Medical College, Karamsad will be known as "Free Seats" and remaining twelve seats will be known as "NRI Seats". N.R.I. seats will be filled up only by N.R.I. students by

Our attention was invited by the learned counsel to Rules for admissions to Medical and Dental Colleges for the year 1995-96. The relevant rules for the academic year 1995-96 and 1996-97 are reproduced hereinbelow;

[illegible]

of

Physiotherapy. These rules will be operated after deducting of 15 percent seats reserved for the All India Entrance Examination as per the judgment of Honourable Supreme Court and herein after will be referred to as "State Quota Seats".

Physiotherapy for the academic year 1996-97.

2. Seven percent of the total seats earmarked for admission to the first M.B.B.S./First B.D.S./First B.Physio course respectively shall be reserved

2. Seven percent, fourteen percent and twenty seven percent of the total seats as mentioned in Annex. A to this Rules shall be reserved for the candid

for candidates belonging to scheduled castes and fourteen percent of the total seats shall be similarly reserved for candidates belonging to Scheduled tribes. Nomadic Tribes and Denotified Tribes and twenty seven percent of total seats in Medical/Dental Colleges and in physiotherapy course shall be reserved for the candidates belonging to the socially and educationally backward classes provided that (i) widows and

SC, ST including Garudi and Jogi and SEBC respectively provided that (i) widows and (ii) orphan childreenn shall be in the 27% reserved seats for SEBC (excluding creamy layer candi-  
-dates as per GR SW Deptt No. SCY.1194-Conf.109-A, dt.1.11.95) subject to the classification that the reservation as applicable to Pramukh Swami Medical College shall be computed with reference to the total number of seats available in the college although

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shall be known as "Free Seats"	College, Karamsad will be
the other fifty percent shall	known as 'Free Seats' and
be known as "Payment Seats".	remaining Twelve (12) seats
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Rs.55,000/- (Rupees Fifty Five	will be made available to
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other words Rs.1.10 lakhs per	receiving minimum 15,000 US
annum. Dollars fee per student per	
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12. Notwithstanding anything  
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the 10 (ten) nominees as may be  
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----- for the First MBBS course .....J  
  
course at M.P.Shah Medical  
College, Jamnagar."

From the rules extracted hereinabove, it becomes clear that in the rules for the year 1995-96, it was specifically stated that those rules would operate after deduction of 15% seats reserved for All India Entrance Examination which were referred as "State Quota Seats". On the other hand, in the rules for the year 1996-97, the phrase "State Quota Seats" is missing. It is, however, not disputed and in our opinion, cannot be disputed that 15% of the total seats are required to be reserved for All India Entrance Examination. Similarly, Rule 3 of the rules for the year 1995-96 describes 50% seats of Pramukh Swami Medical College Karamsad as "Free Seats" while other 50% seats as "Payment Seats" and higher tuition fees payable for a payment seat was fixed at Rs.55,000/per term or Rs.1.10 lakhs per annum. No minimum payment was, however, prescribed. Rule 3 of the Rules for the year 1996-97, on the other hand, treats 88 seats as free seats

and reserves 12 seats as NRI seats for NRI students only and minimum amount fixed is 15000 US Dollars per student per annum. Rule 12 providing for nomination of ten seats by the Central Government for the First M.B.B.S. Course at M.P.Shah Medical College, Jamnagar is only in the current rules for the year 1996-97 and no such rule was found in the year 1995-96.

From the pleadings of the parties and contentions raised at the time of hearing some important points arise for our consideration.

So far as preliminary contention of Mr.H.M.Mehta, regarding maintainability of petitions is concerned it does not detain us much. The petitioners have approached this court by filing these petitions and by espousing cause not of individual nature, but of other students similarly situated. Again, the litigation cannot be said to be against a particular person or for personal vengeance. It also cannot be contended that the petitioners have approached this court malafide and/or with oblique motives. There is no abuse of process of court on their part. The petitions, therefore, cannot be dismissed on that ground. The preliminary contention has, therefore, no force and is rejected.

So far as twelve payment seats for NRI students at Pramukh Swami Medical College, Karamsad are concerned, in the light of the corrigendum issued by the State Government and in view of the statement made by Mr.Y.F.Mehta, learned Assistant Government Pleader that amount of 15000 US Dollars is the maximum fee for per student, per annum the rule cannot be held arbitrary, unreasonable or ultra vires. As held by the Hon'ble Supreme Court, for payment seats, maximum fee must be prescribed for such seats and as maximum fee is prescribed, the petitioners cannot make any grievance. Mr. Panchal also conceded that in view of the corrigendum and statement of Mr.Mehta, the contention does not survive. He, therefore, did not press the point further.

Now, let us go to the merits of the matter. As seen above, there is difference in phraseology in old rules and in new rules. Under the old rules in the cause title itself it was mentioned that those rules would operate after deduction of 15% seats reserved for All India Entrance Examination as per the judgment of the Hon'ble Supreme Court and the remaining seats were described by Rule making authority as "State Quota Seats". There is substantial change in the new rules. In the cause title, there is no mention of deduction of 15% seats from the total seats to be reserved for All India Entrance Examination as per the judgment of the Hon'ble Supreme Court. Rule 2 of the new rules clearly states that seven per cent, fourteen percent and twenty seven per cent of the total seats shall be reserved for Schedule Caste, Schedule Tribe and SEBC respectively. The

first question which arises for our consideration is whether such an action on the part of the State Government to reserve 48% seats for S/C, S/T and SEBC from the total seats is in consonance with the decision of the Hon'ble Supreme Court.

Another important question is whether it is open to the State Government to reserve and/or earmark ten seats for Central Government nominees as may be nominated by Central Government at the First MBBS course at M.P.Shah Medical College, Jamnagar. A question may also arise as to whether such nomination would be "notwithstanding the rules relating to admission" in view of non-obstante clause in Rule 12.

Now, let us consider few leading cases in the light of the submissions made before us.

It was submitted on behalf of the petitioners that in giving admission to Medical Course the Hon'ble Supreme Court has clearly ruled that "merit and merit alone" should be the criterion. In this connection our attention was invited to Dr. Pradeep Jain & Ors. vs. Union of India and others, 1984(3) SCC 654. In that case certain seats were reserved for the residents of the State in Medical course. Dealing with the question, the Supreme court held that in case of admission to MBBS/BDS course, ultimate goal would be admission on All India basis. The Court then proceeded to observe that efforts must always be to select the best and most meritorious students for admission to Technical Institutions and Medical Colleges by providing equal opportunity to all citizens in the country. Exclusion of more meritorious students on the ground that they are not residents within the State would be likely to promote substandard candidates and bring about fall in medical competence, injurious in the long run to the very region. "It is no blessing to inflict quacks and medical midgets on people by wholesale sacrifice of talent at the threshold. Nor can the very best be rejected from admission because that will be a national loss and the interests of no region can be higher than those of the nation." The primary consideration in selection of candidates for admission to the medical colleges must, therefore, be merit. (Emphasis supplied)

In Dr. Dinesh Kumar and another vs. Motilal Nehru Medical College, Allahabad and others, 1985(3) SCC 22, the Hon'ble Supreme Court, reiterated the above principle. Referring to the policy statement of the Government of India filed by the Attorney General, the Supreme Court noted that the view expressed in the said policy statement was to the effect that so far as admission to the Institution of Post Graduate colleges and professional Colleges are concerned, they should be entirely on the basis of All India subject to only constitutional reservation in favour of Schedule Caste and

Schedule Tribe. The Apex Court also directed to make necessary arrangements for holding All India Entrance Examination for admission to MBBS course in future. It was made clear that the admission must be based on evaluation of the relative merits through an Entrance Examination which were open to all qualified candidates throughout the country. The Court stated "We hope and trust that at the next hearing of this writ petition, the Indian Medical Council will produce a well thoughtout scheme for holding an All-India Entrance Examination so that the necessary directions can be given by the Court in regard to the holding of such entrance examination well in time before the next academic year begins in June/July, 1985.

Then came a leading case of Dr.Dineshkumar and others vs. Motilal Nehru Medical College , Allahabad and others, (1986) 3 SCC 727 (Dineshkumar II) .In Dineshkumar (II), pursuant to the direction given by the court earlier, a scheme submitted by the Medical Council of India and circulated amongst various State Governments and Deans of Medical Faculty and others was considered at length. The scheme was modified and redrafted and was submitted by the Government of India to the court for acceptance, which was considered by the Supreme Court. After taking into account objections of various State Governments and particularly states of Tamil Nadu and Karnataka regarding the quota for All India Entrance Examination in the light of reservation policy, the Apex Court directed that in accordance with the suggestions made in the scheme by the Government of India, not less than 15 % of the total number of seats in each Medical College or Institution without taking into account any reservation policy shall be filled in on the basis of All India Entrance Examination. Their Lordships observed that the new formula was fair and just and would bring about the real equality of opportunity in admissions in the MBBS/BDS course without placing the students in one State in an advantageous or disadvantageous position as compared to the students in another State. The Court also noted that it might affect reservation policy adopted by a particular State Government. If percentage of the reservation is high, as in the State of Tamil Nadu or State of Karnataka, number of seats available for admission on the basis of All India Entrance Examination would be relatively less than what would be in a State where the percentage of reservations is low. There would thus be total inequality in the matter of making available seats for admission on the basis of All India Entrance Examination, but the Court stated that, " it would be open to a State Government to reduce the number of seats available for admission on the basis of All India Entrance Examination by increasing the number of reserved categories or by increasing the percentage of reservations." The Court, therefore, directed that all Medical Colleges or Institutions run by Union of India or State Government or a Municipal or other local authority to make reservation of 15% of the total number of seats for the MBBS/BDS

courses available for admission on the basis of All India Entrance Examination.

In another leading case of Unni Krishnan, J.P. and others vs. State of Andhra Pradesh and others, (1993) 1 SCC 645, the question of admission and charging of capitation fees in private educational institutions conducting professional courses arose before the Supreme Court. Considering a number of decisions, in para 195 of the judgment, the Court observed:

"Private educational institutions may be aided as well as un-aided. Aid given by the Government may be cent per cent or partial. So far as aided institutions are concerned, it is evident, they have to abide by all the rules and regulations as may be framed by the Government and/or recognising /affiliating authorities in the matter of recruitment of teachers, and staff, their conditions of service, syllabus, standard of teaching and so on. In particular, in the matter of admission of students, they have to follow the rule of merit and merit alone-subject to any reservations made under Article 15. They shall not be entitled to charge any fees higher than what is charged in Governmental institutions for similar courses. These are and shall be understood to be the conditions of grant of aid. The reason is simple, public funds, when given as grant- and not as loan- carry the public character wherever they go, public funds cannot be donated for private purposes. The element of public character necessarily means a fair conduct in all respects consistent with the constitutional mandate of Articles 14 and 15. All the Governments and other authorities in charge of granting aid to educational institutions shall expressly provide for such conditions (among others), if not already provided, and shall ensure compliance with the same. Again aid may take several forms. For example, a medical college does necessarily require a hospital. We are told that for a 100-seat medical college, there must be a fully equipped 800-bed hospital. Then alone, the medical college can be allowed to function. A Private Medical College may not have or may not establish a hospital of its own. It may request the Government and the Government may permit it to avail of the services of a Government hospital for the purpose of the college free of charge. This would also be a form of aid and the conditions aforesaid have to be imposed- may be with some relaxation in the

matter of fees chargeable- as observed. The Governments (Central and State) and all other authorities granting and shall impose such conditions forthwith, if not already imposed. These conditions shall apply to existing as well as proposed private educational institutions." (Emphasis supplied)

In para 205 also, the Court emphasised that the idea behind the scheme is to eliminate discretion in the management altogether in the matter of admission to professional courses. According to the Court, it is the discretion in the matter of admission that is at the root of the several ills complained of. It is the discretion that has mainly led to the commercialisation of education. The Court stated; "We must strive to bring about a situation where there is no room or occasion for the management or any one on its behalf to demand or collect any amount beyond what is permitted." The Court hoped that it would be highly desirable if the scheme prepared in the said judgment is given a statutory shape by incorporating it in the rules that may be framed under a statute. The Court then issued certain directions.

It was submitted on behalf of the petitioners that after the decision of the Hon'ble Supreme Court in Unni Krishnan, in the matter of admission to students in professional colleges, merit and merit alone must be considered to be the sole criterion. It is also submitted that in the light of the Supreme Court decisions, the legal position regarding reservation is well-settled. At the initial stage, 15% seats of the total seats at all medical colleges should be reserved and earmarked for All India Entrance Examination. From the remaining seats, reservation can be made by State Governments in accordance with the provisions of Art. 15 of the Constitution. It was submitted that in the light of a Larger Bench decision in Indra Sawhney vs. Union of India and others, AIR 1993 SC 477, such reservation is permissible upto 50%. It is, however, not open to the respondents to give effect to the reservation policy on the basis of total number of seats. It is clearly violative of the mandate given by the Hon'ble Supreme Court in Dinesh Kumar as well as in Unni Krishnan. To that extent, the action of the respondents requires to be interfered with by this court.

It was, no doubt, contended by the respondents that Unni Krishnan declared law in respect of giving admission to professional course run by individuals and/or private colleges and not by Government colleges. It cannot be gainsaid that Unni Krishnan applies to private professional colleges. In our opinion, however, the contention of the learned counsel for the petitioners is well founded that if a private college has to

follow the directions issued by the Supreme Court for giving admissions to a professional course, it is inconceivable that a college run by the Union of India or by State Governments or by other authority which can be said to be "State" within the meaning of Article 12 of the Constitution of India, would not be bound by such directions. The point, as submitted by the petitioners, is no longer res integra.

In State of Gujarat and others vs. Meghji Pethraj Shah Charitable Trust and others, (1994) 3 SCC 552, a similar question arose. In that case, one Meghji Pethraj established M.P.Shah Medical College at Jamnagar in 1954 by giving donation of Rs.15 lacs to the erstwhile Government of Saurashtra. It was a Governmental Medical College. As per the arrangement between the donor and the then Chief Minister of the State, the donor was entitled to nominate certain students and the said arrangement continued. The power of nomination was absolute and unfettered and it was within the sole discretion of the donor to select nominees. A petition was also filed in the year 1974 in this court challenging donor's seats which was dismissed and the arrangement was upheld by this court. After the judgment of the Hon'ble Supreme Court in Unni Krishnan, the Government of Gujarat issued a resolution in 1992 and discontinued seats by donor's nomination. That resolution was challenged by the trust. The action of the Government was set aside by this court and the State approached the Hon'ble Supreme Court. Setting aside the decision of this court and upholding the resolution passed by the State in the light of Unni Krishnan, the Hon'ble Supreme Court held that such an arrangement was contrary to law laid down in Unni Krishnan. In that case also, a similar argument was advanced on behalf of the trust that the decision in Unni Krishnan was not relevant and not applicable to Government Colleges and the action taken by the Government of Gujarat terminating the arrangement following the decision in Unni Krishnan wherein the Court was concerned with private colleges was uncalled for and unwarranted. Negating the contention and applying the principle laid down in Unni Krishnan to Government Colleges the Court observed;

" If this is the position in the case of professional colleges established and administered by private bodies, it is inconceivable that in the case of a college established and run by the Government, any admissions can be made otherwise than on merit or any quota can be reserved for any person, family or trust, which may have assisted monetarily in establishing the college. The Government is not precluded from accepting donations from charitable-minded individuals or organisations but it cannot certainly enter into an arrangement or a venture of the kind concerned

herein. " (Emphasis supplied)

Regarding reservation for S/C, S/T and SEBC, it was contended by the petitioners that after deduction of 15% from total seats in all medical colleges earmarked for All India Entrance Examination, only 85% seats are available to the respondents. It is, therefore, not open to the State to calculate reserved seats on the basis of 100% as 100% seats are no more available. According to the petitioners the State Government, therefore, rightly described 85% seats as "State Quota Seats" in the old Admission Rules for the year 1995-96. The action of the State to calculate 48% reservation on the basis of total seats (100%) is contrary to and inconsistent with the decisions of the Supreme Court.

The stand of the State Government on this point is that the Supreme Court has approved reservation upto 50%. In Gujarat, reservation at the First MBBS course is 48%. Hence, it is within the permissible quota. For calculation, the State Government has relied upon an opinion of the Legal Department, Annexure.D to the affidavit-in-reply wherein after considering two decisions of the Supreme Court, it was opined that the reservation for S/C, S/T and SEBC should be counted on the basis of 100 seats and not on the basis of 85 seats.

It was also contended that Schedule Caste, Schedule Tribe and SEBC students cannot be deprived of the benefit available to them by interpreting provisions relating to reservation literally and in pedantic manner and by deducting 15% for All India Competition quota and by computing seats from 85%. This would be doing injustice to Schedule Caste, Schedule Tribe and other backward classes, who have suffered all throughout. Reservation is not charity by the Government but is power coupled with duty and Schedule Caste, Schedule Tribe and other backward class students have right to get the said benefit extended by the Constitution in their favour. Strong reliance was placed by Mr. Mehta in this connection on a decision of the Supreme Court in *Controller & Auditor General of India vs. Jagannathan*, AIR 1987 SC 537.

In our opinion, the interpretation put forward by the respondents is not correct. The law, according to us, is well settled that initially 15% from the total seats are to be reserved at the First MBBS course for All India Entrance Examination. Thereafter, 100% seats are not available to the State and there is no scope of granting or extending benefit to reserved classes from 100% or from the total seats. Such reservation under Article 15 of the Constitution can be made only on the basis of available seats (85%). According to us, the submission of the petitioners is well founded that 15% seats for All India Entrance Examination has been earmarked as per the



decision of the Supreme Court and it is beyond the power of Central Government or State Governments to make encroachment therein. Thereafter only 85% seats remain and hence reservation can be made from that quota. In the instant case as the State Government attempted to reserve 48% seats for S/C, S/C and SEBC from 100%, the action is inconsistent with the decisions of the Supreme Court and is hereby declared as contrary to law.

Regarding ten seats reserved for the nominees to be nominated by the Central Government "notwithstanding the Rules", it was contended on behalf of the respondents that this is a "policy matter". It was submitted that the Government has to consider all questions and has to cater needs at all levels. If taking into account need and necessity of other States and Union Territories, where facilities of medical education is not available, the action cannot be termed as arbitrary or unreasonable.

Our attention was invited by Mr. H.M.Mehta to a decision of the Supreme Court in *Kum Chitra Ghosh & another vs. Union of India and others*; AIR 1970 SC 35, and in particular to para 9 of the decision, wherein the Hon'ble Court observed;

"It is the Central Government which bears financial burden of running medical college. It is for it to lay down criteria for eligibility. From the very nature of the things, it is not possible to throw admission open to the students from all over country. The Government cannot be denied right to decide from what sources admission made. That essentially is a question of policy and depends, inter alia, on an over all assessment and the survey all the requirements of the residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making classification. "

It was submitted that the above observations clearly lay down the law declared by the Supreme Court and is, therefore, binding under Art.141 of the Constitution. *Chitra Ghosh* even to day holds the field. We must, therefore, hold according to the respondents that if the State Government has permitted the Central Government to nominate ten students at the First MBBS course at M.P.Shah Medical College, Jamnagar, the said action cannot be said to be illegal. Mr. Mehta also contended that in exercise of extra-ordinary jurisdiction under Art.226 of the Constitution, a High Court does not interfere

with policy matters. Relying upon the affidavit-in-reply filed by Shri S.K.Shahi, Desk Officer of the Ministry of Health and Family Welfare, he submitted that ten seats were required to be reserved for central pool which have been created with the assistance of voluntary contribution by various States. The Central pool has to be utilised to meet special needs of States/Union Territories where there are no medical/dental colleges and other special interests which are required to be taken care of. He also placed reliance on beneficiary agency, which would be benefited, such as Government of Nagaland (1), Government of Mizorum (2), Meghalaya (1), Sikkim (1), Andamman & Nikobar Islands Administration (2), Ministry of Defence (1), Cabinet Secretary (1) and Ministry of External affairs (1).

Mr. Mehta also submitted that as stated by the deponent in the affidavit, sole criterion for selection in relevant category will be the merit subject to any special orders issued with the concurrence of the Government of India. The affidavit also states that total seats in the Central Pool are 256 for MBBS and 28 for BDS Course. It was asserted that the States/Union Territories which do not have facilities for medical education are different from the States/Union Territories who have such facilities. "The difference is relevant in the context of 15% of seats to be filled in on the basis of All India competition. The Students of those States/UTs where such facilities exist can avail themselves of participation in All India Competition (15%) over and above the facility to compete for admission in their own States. On the other hand the students from the States and UTs lacking in such facilities, they have to depend on all India Quota only". The Central pool is, thus, helpful in making available to the students of those States/Union Territories where facility of the medical education is not available by taking benefit of voluntary contribution of seats made available by cooperation of various States/Union Territories having facilities of medical education. Mr.Mehta conceded that if the admission is given arbitrarily and/or unreasonably, the Court can interfere with such act, but that may be improper exercise of power and in the nature of individual action which can be set aside by a court of law. That does not, however, mean that policy of State Government or of Central Government regarding nomination of candidates is violative of Art.14 or Art.19 of the Constitution.

In the facts and circumstances of the case and in the light of various decisions of the Hon'ble Supreme Court referred to above, there is no doubt in our minds that in the matter of admission to medical education, merit must be the only criterion. The Supreme Court, in no uncertain terms, ruled in Unni Krishnan that merit and merit alone, subject to any reservation made under Article 15 should be the sole criterion. Mr. H.M.Mehta, no doubt submitted that the observations of the

Hon'ble Supreme Court should not be read like a statute and that it is open to the State and/or Union of India to make other reservations. He submitted that reservations other than the one under Art.15 is also permissible. Only consideration which has to be kept in mind by a court of law is that such reservation should not contravene Art.14 and/or Art.19 and must not be arbitrary or unreasonable. Looking to the decisions of the Hon'ble Supreme Court, however, it clearly appears to us that the Supreme Court has given specific direction to consider only merits subject to reservation under Art.15 and the reservation contemplated by Art.15 alone is saved. In our opinion, therefore, it is not open to the State Government to reserve any seat to the Central Government and such an action would not be constitutional and/or consistent with the law laid down by the Apex Court.

Regarding special needs of the States/ Union Territories where no medical education is available, it is clear that the Scheme was submitted by the Medical Council of India before the Hon'ble Supreme Court in Dinesh Kumar (II). The said scheme was considered at length, was modified and redrafted and the said modified and re-drafted Scheme was submitted by the Government of India before the Court for acceptance. The Hon'ble Supreme Court thereafter taking into consideration a number of factors including objections by various State Governments, stated ; "We, therefore, agree with the Government of India that formula adopted by us in our judgment dt. June 22, 1984 for determining number of seats which should be made available for admission on the basis of All India Entrance Examination should be changed. We would direct in accordance with the suggestion made in the Scheme by the Government of India that not less than 15% of the total number of seats in each Medical college or institution without taking into account any reservation validly made shall be filled in on the basis of all India Entrance Examination." The Supreme Court considered new formula as "fair and just" which brought about "real equality of opportunity in admission in MBBS/BDS course without placing the students in one State in advantageous or disadvantageous position as compared to the students in another State".

We are unable to persuade ourselves inspite of the efforts on behalf of the respondents that when the above scheme was submitted by the Government of India, non-availability of medical education in various States/Union Territories was not known. It is equally inconceivable that the Central Government was unaware of such situation when it submitted the Scheme before the Supreme Court. In our considered opinion, it is not open to us to conceive that the Supreme Court was unmindful of non-availability of medical education in certain States/Union

Territories. In these circumstances, in our opinion reservation of ten seats at the First MBBS course at M.P.Shah Medical College, Jamnagar cannot be said to be in accordance with law or in conformity with the decision of the Hon'ble Supreme Court and it must be held to be bad and accordingly the reservation of ten seats by the State Government for students to be nominated by the Central Government under Rule 12 is declared illegal. Rule 12 thus requires to be struck down and is accordingly struck down.

It was contended by the respondents that the petitioners have not joined necessary and proper parties to these petitions and hence, the petitions are liable to be dismissed. It was stated that the Central Government has already nominated eight students and two of them had already gone to Jamnagar as the nominees of the Central Government. It was, therefore, contended that no order can be passed by this Court in absence of those students. Similarly, no student belonged to S/C, S/T or SEBC is a party respondent and in their absence, no relief can be granted to the petitioners. We do not find any substance in the contention. In our opinion, the Hon'ble Supreme Court has finally decided both the questions. So far as reservation is concerned, it is open to the State Government to implement the same from 85% seats after deducting 15% at the First MBBS course subject to the maximum of 50% and that was being done till the last year. It was stated that till to day, no student has been admitted under the new Rules. Hence, no rights can be said to have accrued in favour of third party. Regarding nomination by the Central Government, Rule 12 has been held ultra vires and no rights accrue from such unconstitutional provision. Mere nomination of a student by the Central Government does not confer right in his favour. The petitions, therefore, cannot be dismissed on the ground of non-joinder of parties.

For the reasons aforesaid, our conclusions are:

- (i) At the outset, 15% of the total seats have to be earmarked in all medical Colleges/ Institutions for All India Entrance Examination.
- (ii) From the remaining 85% seats, reservation can be made for Schedule Caste, Schedule Tribe and other backward class as provided in Art.15 of the Constitution subject to the maximum of 50%.
- (iii) The seats are to be filled in on merits subject to
  - (a) 15% on the basis of All India Entrance Examination and (b) reservation validly made by the

State Government under Art.15 of the Constitution.

- (iv) A part of Rule 2 providing 48% reservation for Schedule Caste, Schedule Tribe and SEBC is declared valid. But to the extent that it provides such reservation from the total seats (100%) is declared ultra vires and unconstitutional. Reservation of 48% must be made from the available seats (85%).
- (v) Rule 12 providing ten nominees as may be nominated by the Central Government to the First MBBS Course at M.P.Shah Medical College, Jamnagar is declared ultra vires and unconstitutional;
- (vi) Rule 3 providing twelve seats to NRI students is held intra vires and constitutional in view of corrigendum issued by the State Government and a statement made by Mr.Y.F.Mehta, learned Assistant Government Pleader that they will be filled in on the basis of inter se merits of NRI students by receiving maximum and not minimum 15000 US Dollars per student per annum.

In the result, the petitions are allowed. Rule is made absolute to the above extent with no order as to costs.

(G.D.KAMAT C.J.)

(C.K.THAKKER J.)

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Mr. H.M.Mehta, learned Standing Counsel for the Union of India states that this court has declared provisions of Rule 12 ultra vires and unconstitutional, which enables the Central Government to nominate 10 students at First MBBS Course at M.P.Shah Medical College, Jamnagar. He prays that the judgment to that extent may be kept in abeyance as the Central Government intends to approach the higher forum. In our opinion, prayer is reasonable. Operation of the judgment to the

above extent is kept in abeyance till October 25, 1996.

Dt. 5.10.1996. (G.D.KAMAT C.J.)

(C.K.THAKKER J)